

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

AMIN ABDULLAH-CLARKE  
aka ANTHONY CLARK,  
CDCR #C-84681,

Plaintiff,

vs.  
VICTOR ALMAGER; NASARIA  
BARRERAS; ALAN HERNANDEZ;  
DOUG DEGEUS; DR. ALLEN;  
DR. ROBINSON; DR. ARMENTA,

Defendants.

Civil No. 08-0882 DMS (WMc)

**ORDER:**

**(1) GRANTING MOTION TO  
PROCEED *IN FORMA PAUPERIS*,  
IMPOSING NO INITIAL PARTIAL  
FILING FEE, GARNISHING \$350  
FROM PRISONER'S TRUST  
ACCOUNT [Doc. No. 2]; AND**

**(2) DIRECTING U.S. MARSHAL TO  
EFFECT SERVICE OF SUMMONS  
AND COMPLAINT PURSUANT TO  
FED.R.CIV.P. 4(c)(2)  
AND 28 U.S.C. § 1915(d)**

Amin Abdullah Clark, aka Anthony Clark ("Plaintiff"), a prisoner currently incarcerated at California State Prison, Los Angeles County located in Lancaster, California, and proceeding pro se, has submitted a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

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I.

## **Motion to Proceed IFP**

3 All parties instituting any civil action, suit or proceeding in a district court of the United  
4 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. See 28  
5 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is  
6 granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). See *Andrews v. Cervantes*, 493  
7 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).  
8 Prisoners granted leave to proceed IFP however, remain obligated to pay the entire fee in  
9 installments, regardless of whether the action is ultimately dismissed for any reason. See 28  
10 U.S.C. § 1915(b)(1) & (2).

11 The Court finds that Plaintiff has submitted an affidavit which complies with 28 U.S.C.  
12 § 1915(a)(1), and has attached a certified copy of his trust account statement pursuant to 28  
13 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. The Court has now reviewed Plaintiff's trust  
14 account statement and finds that Plaintiff has insufficient funds from which to pay any initial  
15 filing fee. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be  
16 prohibited from bringing a civil action or appealing a civil action or criminal judgment for the  
17 reason that the prisoner has no assets and no means by which to pay the initial partial filing  
18 fee.”); *Taylor v. Delatoore*, 281 F.3d 844, 850 (9th Cir. 2002) (finding that 28 U.S.C.  
19 § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s IFP case based solely  
20 on a “failure to pay ... due to the lack of funds available to him when payment is ordered.”).

21 Accordingly, the Court **GRANTS** Plaintiff's Motion to Proceed IFP [Doc. No. 2] and  
22 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the Court further  
23 orders the Secretary of the California Department of Corrections and Rehabilitation ("CDCR")  
24 to garnish the \$350 balance of the filing fees owed in this case, collect and forward them to the  
25 Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.  
26 § 1915(b)(1).

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II.

### **Sua Sponte Screening per 28 U.S.C. §§ 1915(e) and 1915A**

The PLRA also obligates the Court to review complaints filed by all persons proceeding IFP and by those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after docketing.” See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these provisions, the Court must sua sponte dismiss complaints, or any portions thereof, which are frivolous, malicious, fail to state a claim, or which seek damages from defendants who are immune. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (§ 1915A); see also *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (discussing § 1915A). “[W]hen determining whether a complaint states a claim, a court must accept as true all allegations of material fact and must construe those facts in the light most favorable to the plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

17       Here, the Court finds that the retaliation claims in Plaintiff's Complaint are sufficient to  
18 survive the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Therefore,  
19 Plaintiff is entitled to U.S. Marshal service on his behalf. *See Lopez*, 203 F.3d at 1126-27; 28  
20 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process, and perform all  
21 duties in [IFP] cases."); FED.R.CIV.P. 4(c)(2) (providing that "service be effected by a United  
22 States marshal, deputy United States marshal, or other officer specially appointed by the court  
23 ... when the plaintiff is authorized to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.").  
24 Plaintiff is cautioned, however, that "the sua sponte screening and dismissal procedure is  
25 cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [a defendant]  
26 may choose to bring." *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

III.

### **Conclusion and Order**

Good cause appearing, **IT IS HEREBY ORDERED** that:

4           1. Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2]  
5 is **GRANTED**.

6       2. The Secretary of California Department of Corrections and Rehabilitation, or his  
7 designee, is ordered to collect from Plaintiff's prison trust account the \$350 balance of the filing  
8 fee owed in this case by collecting monthly payments from the trust account in an amount equal  
9 to twenty percent (20%) of the preceding month's income credited to the account and forward  
10 payments to the Clerk of the Court each time the amount in the account exceeds \$10 in  
11 accordance with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS SHALL BE CLEARLY  
12 IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION.

13       3. The Clerk of the Court is directed to serve a copy of this order on Matthew Cate,  
14 Secretary, California Department of Corrections and Rehabilitation, P.O. Box 942883,  
15 Sacramento, California 94283-0001.

**IT IS FURTHER ORDERED** that:

17       4. The Clerk shall issue a summons upon Defendants and forward it to Plaintiff along  
18 with a blank U.S. Marshal Form 285 for each of these Defendants. In addition, the Clerk shall  
19 provide Plaintiff with a certified copy of this Order, and certified copies of his Complaint and  
20 the summons for purposes of serving each of these Defendants. Upon receipt of this “IFP  
21 Package,” Plaintiff is directed to complete the Form 285s as completely and accurately as  
22 possible, and to return them to the United States Marshal according to the instructions provided  
23 by the Clerk in the letter accompanying his IFP package. Thereafter, the U.S. Marshal shall  
24 serve a copy of the Complaint and summons upon each Defendant as directed by Plaintiff on  
25 each Form 285. All costs of service shall be advanced by the United States. *See* 28 U.S.C.  
26 § 1915(d); FED.R.CIV.P. 4(c)(2).

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1       5. Defendants are thereafter **ORDERED** to reply to the Complaint within the time  
2 provided by the applicable provisions of Federal Rule of Civil Procedure 12(a). *See* 42 U.S.C.  
3 § 1997e(g)(2) (while Defendants may occasionally be permitted to “waive the right to reply to  
4 any action brought by a prisoner confined in any jail, prison, or other correctional facility under  
5 section 1983,” once the Court has conducted its *sua sponte* screening pursuant to 28 U.S.C.  
6 § 1915(e)(2) and § 1915A(b), and thus, has made a preliminary determination based on the face  
7 on the pleading alone that Plaintiff has a “reasonable opportunity to prevail on the merits,”  
8 Defendants are required to respond).

9       6. Plaintiff shall serve upon Defendants or, if appearance has been entered by  
10 counsel, upon Defendants' counsel, a copy of every further pleading or other document  
11 submitted for consideration of the Court. Plaintiff shall include with the original paper to be  
12 filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy  
13 of any document was served on Defendants, or counsel for Defendants, and the date of service.  
14 Any paper received by the Court which has not been filed with the Clerk or which fails to  
15 include a Certificate of Service will be disregarded.

17 || DATED: July 22, 2008

**HON. DANA M. SABRAW**  
United States District Judge